



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

COPY MAILED

JUL 25 2007

OFFICE OF PETITIONS

MCDERMOTT WILL & EMERY LLP
600 13TH STREET, N.W.
WASHINGTON DC 20005-3096

In re Application of

Kay

Application No. 10/814,584

Filed: April 1, 2004

Attorney Docket No. 44117-137

:
: DECISION
: DISMISSING PETITION
:
:

This application has been referred to this office in light of the communication filed June 4, 2007, by inventor Kay, styled as a petition under 37 CFR 1.182 to withdraw this application from issue.

The petition is dismissed without further consideration.

The petition seeks withdrawal of this application from issue on the ground that the terminal disclaimer filed January 9, 2007, is defective in that as this application and Continuation-in-Part (CIP) application no. 11/094,510('510) are not commonly owned, 37 CFR 1.321 has not been satisfied.

The CIP application was accorded Rule 47 status on February 9, 2006, in the absence of the making of this application by their joint inventor Kay. While Mr. Kay has herein participated in the filing and appointed a power of attorney, the assignee of the entire interest filed a 3.73(b) statement on March 27, 2007 which is reasonably construed as indicating that the assignee herein intervened on that date to the exclusion of the named inventor. Since there is and remains a duly appointed practitioner, and further the assignee of the entire interest has intervened, there is no compelling reason to further consider the subsequent petition signed by the named inventor. See 37 CFR 1.33(b)(4).

Nevertheless, while the terminal disclaimer filed herein correctly asserts that Quantum Leap Research Inc., (Quantum) is the owner of 100% interest in this application, the instant disclaimer is facially lacking in that the 2 applications are NOT commonly owned. Since the '510 application is asserted to be a CIP of this application the assignment of this application by Kay does not carry, and thus has no force and effect with respect, to the CIP application. See MPEP 306. In the absence of an assignment of Kay's interest in the CIP application to Quantum, Kay retains his 50% *pro rata* share in the CIP application. See 37 CFR 3.73(a). While Quantum is the 100% assignee of this application, Quantum is the assignee of only 50% of the CIP and Kay owns the other 50%. Accordingly, the 2 applications are not commonly owned.

This application is being referenced to the Technology Center for further action consistent with this communication.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3217.


Brian Hearn
Petitions Examiner